

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Hon. Nancy G. Edmunds
Case No. 10-CR-20005

v.

D-1 UMAR FAROUK ABDULMUTALLAB,

Defendant.

/

MOTION HEARING AND SENTENCING
before the Honorable Nancy G. Edmunds
Detroit, Michigan

FEBRUARY 16, 2012

APPEARANCES:

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1 Detroit, Michigan

2 Thursday, February 16, 2012

3 1:35 p.m.

4 - - -

5 THE CLERK: Court calls the case of United States
6 versus Umar Farouk Abdulmutallab, case number 10-20005.

7 State your appearances for the record please.

8 MR. TUKEL: May it please the Court, Jonathan
9 Tukel, Cathleen Corken and Michael Martin, assistant U.S.
10 attorneys on behalf of the United States.

11 MR. CHAMBERS: Good afternoon. Anthony Chambers,
12 standby counsel, along with Mr. Abdulmutallab who is seated to
13 my left.

14 THE COURT: Good afternoon. This is the adjourned
15 date and time for sentencing in this matter.

16 Before we reach the actual analysis of the
17 sentence, the guidelines, et cetera, we have a few motions to
18 dispose of. I have three, actually, that I'm aware of.

19 The first is the government's motion to submit a
20 video as part of their sentencing elocution. The second is
21 defendant's motion to hold the statute at issue in this case,
22 one of the statutes, unconstitutional, on the basis of it being
23 cruel and unusual punishment and the absence of a Commerce
24 Clause connection, and the third is defendant's motion to
25 strike the report of Simon Perry from the sentencing

1 submission.

2 So, Mr. Tukel, why don't you go first.

3 MR. TUKEL: Your Honor, if you would like to hear
4 the motion about the video first, Mr. Martin will speak to
5 that.

6 THE COURT: Mr. Martin.

7 MR. MARTIN: Thank you, Your Honor. Good
8 afternoon.

9 Your Honor, the government's motion seeks to allow
10 the government to play at sentencing a 52-second video clip of,
11 that was created by the FBI showing a demonstration by the FBI
12 of an explosion of 200 grams of PETN, which is a high
13 explosive. This is the same video that was the subject of the
14 government's motion to admit before trial which the Court
15 granted and was intended to be an exhibit at trial, and the
16 video essentially is an explosion of 200 grams of PETN on a
17 sheet of aluminum that is suspended by two wooden sawhorses.

18 And as the Court may recall, the main charge of the
19 defendant's explosive device was a, essentially a cylinder of
20 PETN. It was a plastic bag that measured about six inches long
21 and was about two inches in diameter. I have a photo of that
22 I'd ask Ms. Secord to display on the screen. This is the
23 actual main charge that was recovered from the aircraft. You
24 can see the length there as well, and you can also see from
25 this photo that, at least a portion of the main charge was, as

1 it was found on the plane, damaged, and broken open and PETN is
2 visible, and PETN was recovered from the floor and some of the
3 clothing and other items in the aircraft.

4 So we know that the total amount of PETN that was
5 in this cylinder was not the total amount of PETN that the
6 defendant had prior to igniting the device.

7 The total amount of PETN in this cylinder was
8 76 grams, and so the FBI made an attempt to estimate the total
9 amount of PETN that would have been in that cylinder before he
10 detonated that, and using the length and the diameter of that
11 cylinder, they recreated a cylinder of the same volume, filled
12 it with PETN and came out with two estimates. One was 200
13 grams and the other was 300 grams, and the difference is
14 whether or not the PETN was packed tightly into the cylinder as
15 it actually was in the device, or was not packed tightly. The
16 not packed tightly yielded a conservative estimate of 200 grams
17 which is why the video the government intends to display at
18 sentencing today contains 200 grams.

19 The relevance of this demonstration is with respect
20 primarily to the counts of conviction that are not mandatory
21 because Your Honor must apply the standard 3553(a) factors in
22 determining the sentence with respect to those counts, and
23 certainly the nature and circumstances of the offense is one of
24 the factors you must consider, and this is highly relevant to
25 that. It's made even more relevant by the fact that the

1 defendant in his pretrial -- or sentencing motions has
2 essentially made the argument to Your Honor that this wasn't
3 that big of a deal because no one was hurt, no one was injured,
4 the government can't prove that anybody would be harmed in any
5 way, and so, therefore, he's deserving of a lenient sentence
6 with respect to those counts, and certainly this evidence would
7 go to rebut that.

8 THE COURT: Thank you, Mr. Martin.

9 Mr. Abdulmutallab, do you wish to have Mr. Chambers
10 respond on your behalf? Is that a yes?

11 THE DEFENDANT: Yes.

12 MR. CHAMBERS: Yes, Your Honor, it is our intention
13 by way of procedure that I will make any responses to any of
14 the legal issues.

15 THE COURT: That's fine.

16 (1:40 p.m.)

17 MR. CHAMBERS: As it relates to the government's
18 request, we suggest there are two problems with their approach.
19 The first problem is the conditions upon which they're
20 suggesting that this explosiveness or this demonstration which
21 they've done will provide the Court with some insight.

22 The explosion for which they're offering to the
23 Court is something in an area where there's nothing surrounding
24 it. It doesn't give any impact or even show to the Court if it
25 explodes what the damage would have, could have possibly would

1 be to an airplane, to any passengers. The conditions are not
2 similar to the situation in this particular case.

3 I'm also going to suggest to the Court, it's really
4 not relevant because as relates to the elements of the offense,
5 Mr. Abdulmutallab has already pled guilty to the elements of
6 all of the offenses.

7 With regard to the demonstration, at best it's
8 highly speculative. The government says, well, we were able to
9 retrieve 76 grams.

10 We don't know how many grams were there, how they
11 were packed, we don't know whether or not they were compromised
12 due to any elements, due to the way that it was packaged and
13 the manner in which it was carried by anyone. We don't know
14 what the situation and circumstances are. To say that we
15 estimate or believe it could be 200 or 300 grams so we want to
16 choose the 200 grams is not consistent with the evidence,
17 leading to further speculation, and, once again, not a similar
18 situation and something that I suggest does not provide the
19 Court with any insight.

20 We would ask the Court not to admit it. We
21 understand that, yes, it was an exhibit that could have been
22 used during trial. If it was used during trial, we then would
23 have had the opportunity also obviously to cross examine the
24 person who did the demonstration, the FBI agent, and ask him
25 various questions.

1 I would also suggest to the Court if the government
2 wanted to offer a video, there are videos out there using
3 amounts of PETN which are actually put on a plane, and when it
4 was shown that those explosives during this demonstration by a
5 retired, I believe, FBI agent, was put onto a plane, no damage
6 was done to the exterior of the plane, and the damage on the
7 interior was limited at best. So there are all kinds of
8 exhibits to be presented to say, yes, it could do this but, no,
9 it couldn't do that. But in this case, in the manner in which
10 they're offering it, it's speculative at best, and we ask the
11 Court not to allow it.

12 THE COURT: Thank you.

13 I'm going to grant the government's motion. I
14 think some of the defendant's points are well taken. I think
15 that it is somewhat speculative exactly how much of PETN was
16 originally carried on the plane. The government's done its
17 best to try to estimate that and has estimated on the low end
18 based on the configuration of what was actually found on the
19 plane.

20 There has been an argument made with respect to the
21 seriousness of the offense that what was taken onto the plane
22 was not capable of inflicting the kind of damage that the
23 prosecution was alleging in this case, and I think it goes to
24 that.

25 There's enough relevance here that I'm going to

1 permit it to be shown, but not at the moment.

2 I'd like to go to the second motion, that is,
3 defendant's motion to hold the statute, the relevant statute
4 unconstitutional for the two reasons I just stated.

5 (1:45 p.m.)

6 MR. CHAMBERS: We are going to rely on our
7 pleading, but I just want to say to the Court, we believe that
8 in light of the circumstances and in light of the typical
9 sentencing, of course, the Court considers the conduct as well
10 as the background of the defendant, and various other factors
11 under 3553. We believe that the Court should have some
12 discretion. Whether you exercise that discretion and to what
13 degree obviously is another issue, but it's our position that
14 to say that life imprisonment without the possibility of parole
15 and any other considerations is in fact, we suggest, cruel and
16 unusual punishment under the circumstances where there has been
17 no death regardless of the intent of the act, and where there
18 has been no serious bodily injury to anyone, at least nothing
19 life threatening, I would suggest, even as it relates to
20 Mr. Abdulmutallab.

21 We would ask the Court to consider our motion,
22 consider our brief and rule in our favor.

23 THE COURT: Mr. Tukel.

24 (1:46 p.m.)

25 MR. TUKEL: Your Honor, in response to that, I'll

1 just briefly say that that is essentially the exact same
2 argument that was made to the Supreme Court in Harmelin versus
3 Michigan in which a mandatory life sentence without possibility
4 of parole was upheld against an Eighth Amendment challenge
5 based upon the harm that could be done by that, and the
6 analysis that the Sixth Circuit has given us in cases such as
7 Hill is that the Court is to look at the seriousness of the
8 offense and the intended harm and whether or not violence was a
9 part of the crime, and determine whether it is at least that
10 serious.

11 And given the nature of what defendant was trying
12 to do here, which is to commit mass murder, that is
13 significantly more serious than the possessory offense at issue
14 in Harmelin, and if the sentence in Harmelin was
15 constitutional, which the Supreme Court held it was, then the
16 mandatory sentences in this case are also constitutional.

17 THE COURT: Thank you, Mr. Tukel.

18 MR. CHAMBERS: Can I just briefly respond?

19 THE COURT: Sure, go ahead.

20 (1:47 p.m.)

21 MR. CHAMBERS: Without question, it was upheld, but
22 that was not the statute in this case which is in question.
23 This statute, as far as our research is concerned, has really
24 not been thoroughly challenged. Certainly there have been some
25 challenges as being cruel and unusual with regard to drug

1 statutes, but we would suggest to the Court that this is a
2 particular situation with specialized facts, that's all.

3 THE COURT: Thank you, Mr. Chambers, Mr. Tukel.

4 I'm going to deny this motion. I think it's pretty
5 clear that the Supreme Court would not find the life
6 imprisonment without parole sentence that's mandatory on two
7 counts in this case to be cruel and unusual.

8 The Supreme Court has held that in nondeath penalty
9 cases, the narrow proportionality principle applies, and the
10 key issue is the gravity of the offense and the harshness of
11 the penalty. The Supreme Court has said that only gross
12 disproportionality in extreme cases merit constitutional
13 inquiry, and the lead case that Mr. Tukel cited, Harmelin
14 versus Michigan, did uphold a life sentence without parole for
15 a first-time offender, in a cocaine possession conviction.

16 I understand that it's a different statute,
17 Mr. Chambers, but if anything, the statute at issue in this
18 case covers a far more potentially damaging offense than the
19 simple cocaine possession at issue in the Harmelin case.

20 The Sixth Circuit has directly addressed the issue
21 that no one was actually physically injured and rejected that
22 argument in the case of United States versus Smith back in
23 2007. In that case, there was a pipe bomb left at a place of
24 business which was discovered before it detonated, and the
25 Court rejected the cruel and unusual punishment argument.

1 Harmelin, which we've already talked about, was a
2 case involving a first-time offender, so that issue falls as
3 well.

4 You haven't separately argued or articulated this
5 afternoon the Commerce Clause issue, but under the cases that
6 involve the 924(c) charges, the courts have held, the Sixth
7 Circuit most recently has held in 2003 that the destructive
8 device prong of that statute is not properly analyzed as a
9 free-standing statute, that you must focus on whether the
10 underlying crime involves the Commerce Clause.

11 Here, the underlying charges to the 924(c) offenses
12 have, as elements, a requirement of an effect on interstate
13 commerce, and the Lopez case on which the defendant relies
14 specifically says that congress has the authority to keep the
15 channels of interstate commerce free from injurious uses and is
16 empowered to regulate and protect the instrumentalities of
17 interstate commerce.

18 Clearly, the underlying offense in this case and
19 the underlying charges affect interstate commerce. We're
20 talking about an international airline flight, not only
21 interstate but intercontinental commerce, and I don't see any
22 Commerce Clause issue that would require me to strike these
23 statutes.

24 So motion denied.

25 Mr. Chambers, you have one more motion. That is,

1 to strike the report of Simon Perry.

2 (1:51 p.m.)

3 MR. CHAMBERS: That is correct. It is actually a
4 dual motion; one to move to strike, and another requesting
5 certain discovery materials if, in fact, the Court is going to
6 consider it.

7 We believe as it relates to Dr. Perry's memorandum
8 or the exhibit which is attached, Dr. Perry talks about
9 interviewing 40 individuals, or approximately 40 individuals.
10 We have not received a CV for Dr. Perry. We would also like to
11 have copies of the actual studies of the 40 individuals. We'd
12 like to see the interviews. We'd like to be able to approach
13 and address it and confront it. We believe that the
14 speculation involved in Dr. Perry's analysis as it relates to
15 Mr. Abdulmutallab, who he has never interviewed, nor has he
16 ever interviewed or met with any of his family members, anyone
17 in his community or any -- gotten any evidence relative to
18 Mr. Abdulmutallab to make it specific as to him so that he can
19 make an accurate determination. We believe that if the Court
20 is going to consider any of the information from Dr. Perry, the
21 list of matters enumerated in our request, and we'd also ask
22 for an adjournment of the sentencing.

23 THE COURT: Thank you.

24 Mr. Tukel.

25 MR. TUKELE: Your Honor, as to the matter of the CV,

1 that was provided in discovery prior to the trial commencing.

2 There's a number of matters, I mean, the rules of
3 evidence obviously don't apply to this proceeding. The
4 defendant has said the confrontation clause. The Sixth Circuit
5 has held on numerous occasions that the confrontation clause
6 doesn't apply at sentencing, and by statute, 18 U.S.C.
7 Section 3661 says that there shall be no limitation placed on
8 the information concerning the background, character and
9 conduct of a person convicted of an offense which a court of
10 the United States may receive and consider for the purposes of
11 imposing an appropriate sentence.

12 So it's our contention that this report from
13 Dr. Perry, with whatever weight the Court wish to place on it,
14 is particularly relevant in light of the fact that the
15 defendant now claims in his sentencing memorandum that there
16 is, quote, a likely possibility of the defendant reforming.
17 The report goes directly to that point.

18 And I think the defendant also misreads what
19 Dr. Perry is saying in his report. Dr. Perry relied to a large
20 extent on the defendant's own words and the defendant's own
21 statements as to what his future intentions are, and he opined
22 on that in light of the research that he's done. And one of
23 the things the defendant said, he said to this Court at the
24 time of his plea, is that he is under a religious obligation to
25 wage jihad and that waging it against the United States is

1 highly encouraged.

2 So when we say in our sentencing memorandum, which
3 is what the defendant is objecting to, that the defendant poses
4 a continuing and ongoing threat, yes, we are to some extent
5 relying on Dr. Perry and his report, but we are also taking at
6 face value, as to Dr. Perry, the defendant's statements to the
7 Court. So in light of those authorities, I think it is
8 properly part of the government's memorandum.

9 (1:54 p.m.)

10 MR. CHAMBERS: While I agree that the rules of
11 evidence are not applicable, the due process requirements, I
12 think, still apply. I'm going to also suggest to the Court we
13 have a Presentence Investigation Report in this case which has
14 been prepared. The government says that he is relying upon
15 statements. I want to suggest to the Court, he may also, and I
16 can't say for certain because I wasn't present when he was
17 given any information, may be relying upon statements made by
18 the defendant during negotiation purposes, and we're going to
19 have to address that issue when we get to the presentence
20 report. And if so, then he perhaps has also included
21 statements which he's prohibited from having, and then, our
22 position, providing to the Court. We would ask the Court not
23 to allow it.

24 We did also ask for the funds for which Dr. Perry's
25 been paid to make such an assessment and other matters which

1 could affect his credibility or lack thereof.

2 THE COURT: Thank you.

3 I'm actually going to grant this motion. I think
4 it probably is admissible under the rules of evidence. I mean,
5 rules of evidence don't apply in sentencing hearings, but I
6 think it's cumulative. I think Dr. Perry relied extensively on
7 statements made by Mr. Abdulmutallab. I believe that the Court
8 is perfectly capable of reading, and I heard those statements
9 at the time they were given, and I'm able to evaluate them on
10 my own without the assistance of that report.

11 So I have some concern about including it for the
12 reasons articulated by the defendant. I don't think it's
13 necessary, and I'm going to grant the motion to strike it.

14 I think that's all the motions. There were a
15 couple of objections filed to the Presentence Investigation
16 Report, one of which Mr. Chambers just alluded to, and
17 Mr. Chambers, perhaps you'd like to address that objection
18 first.

19 MR. CHAMBERS: Yes. And I will tell you, the
20 second objection, I believe, is moot. I believe we resolved
21 that with the probation department.

22 THE COURT: All right.

23 MR. CHAMBERS: So there's really only one
24 objection. Our objection is to the offense conduct that is
25 included in the presentence report.

1 At a time prior to the trial beginning, shortly
2 after this incident occurred, Mr. Abdulmutallab, with his then
3 counsel from the Federal Defender's Office, engaged in plea
4 negotiations with the government. During those plea
5 negotiations, there were discussions with regard to what took
6 place, other potential individuals, his role and this conduct,
7 and various other things.

8 There was, my understanding -- and I was not
9 present -- a Kastigar understanding during the course of these
10 discussions and during --

11 THE COURT: I don't think -- correct me if I'm
12 wrong, but I do not believe that a proffer agreement was ever
13 signed by the defendant.

14 MR. CHAMBERS: No, I'm not suggesting that it was
15 signed, but what is important is, although it wasn't signed by
16 the defendant, he was acting upon the representations of the
17 government, the prosecuting attorney's office, who did in fact,
18 I understand, sign it and did in fact agree to operate under
19 those provisions.

20 But regardless, I think, of whether or not Kastigar
21 is applicable in this case, Rule 11, I believe and would
22 suggest to the Court prevents the inclusion of these
23 statements, and the reason that I say that is because Rule 11,
24 if we look to 11(f), it talks about the admissibility or
25 inadmissibility of plea discussions and related statements, and

1 under Section F it talks about, "The admissibility or
2 inadmissibility of a plea, a plea discussion, or any related
3 statement is governed by Rule 410 of the Federal Rules of
4 Evidence."

5 When we go over to Rule 410 of the Federal Rules of
6 Evidence and we look at Subsection 4, it talks about,
7 "Prohibiting the use of any statement made in the course of
8 plea discussions with an attorney for the prosecuting authority
9 which did not result in a plea of guilty or which the plea of
10 guilty was later withdrawn."

11 THE COURT: That's not in the context of the
12 sentencing hearing; that's for trial.

13 MR. CHAMBERS: But if you look at the wording and
14 the language of that section, it doesn't say trial, it talks
15 about hearings, proceedings. It doesn't except out a
16 sentencing hearing. And I know hearings typically you can have
17 hearsay and everything else. I understand that, but it does
18 not specifically say trial, it says "any civil or criminal
19 proceeding."

20 And I'm suggesting that this clearly is a criminal
21 proceeding, and it's our position that those statements were
22 made relying upon the statements that he believed that they
23 would not utilize them, and were being done for purposes of
24 trying to negotiate a plea, which obviously did not occur in
25 this case.

1 And typically, I understand the rules of evidence
2 do not apply. However, I think that the plain reading of Rule
3 11 and 410 makes it applicable in this situation.

4 THE COURT: All right. Thank you.

5 MR. TUKEL: Your Honor, the Court is exactly right,
6 Rule 1101(d)(3) says the rules of evidence are not applicable
7 at sentencing, so whatever is incorporated, whatever Rule 410
8 says doesn't matter. It doesn't apply to these proceedings.

As far as any agreement, there was an agreement
that was offered to the defendant, the defendant rejected it,
the defendant did not sign it, he said he wished to go ahead
and proceed without it. The government never signed it, there
was never a meeting of the minds. That agreement never went
into force. Those statements are admissible for purpose of
sentencing.

16 || (1:59 p.m.)

24 I think this is really an objection that goes to
25 the offense conduct section of the presentence report. In any

1 event, it's more narrative than anything else. It does not
2 really go to any guideline calculation, but I believe that it's
3 clearly appropriate under the statute and that the rules of
4 evidence, including Rule 410, would not apply.

5 So that takes care of the defendant's objections to
6 the Presentence Investigation Report.

7 Are there any other additions, corrections or
8 objections, Mr. Chambers and Mr. Abdulmutallab?

9 MR. CHAMBERS: The only other statement that
10 Mr. Abdulmutallab would make which is in our objections is that
11 the offense conduct section is false and misleading.

12 THE COURT: All right. Thank you.

13 For the government, Mr. Tukel?

14 MR. TUKEL: We have nothing further, Your Honor.

15 THE COURT: All right. I'd like to hear the victim
16 statements next, and then after the victim statements and some
17 comments concerning the requests for restitution that have been
18 received by the Court, I'll let the government play its video,
19 and then we'll go to elocution.

20 So there are, I believe, five people who have asked
21 to speak. They have been previously informed that the
22 limitation on their time is five minutes each, and the first of
23 those is Mr. Lamare Mason.

24 Mr. Mason.

25 (2:02 p.m.)

1 MR. MASON: Good afternoon, Judge and jury -- or
2 everyone. My name is Lamare Mason. I'm from Cleveland, Ohio,
3 and I am a Delta flight attendant based in Detroit, Michigan.
4 I was on -- I was an active crew member working Flight 253 from
5 Amsterdam, Netherlands to Detroit, Michigan.

6 Since that day, my life has changed. I had a dream
7 job of traveling the world and meeting all types of people.
8 This man stole and robbed from me the pleasure. It's
9 punishment going to work now, it's not a joy. I never thought
10 that my life would change, to wake up in night sweats or
11 terrors or thinking someone's going to blow up the plane or try
12 to end my life or everyone else on an Airbus 330 aircraft.

13 It took a lot of courage for me to come today
14 because every day I'm on an airplane, and every day I hope that
15 the Court and everyone understands that it's my responsibility
16 if -- to ensure the safety and security of each passenger that
17 I took an oath in my FAA license to keep secure.

18 I just hope that the Court can understand that his
19 intentions were to end our lives in the aircraft and on the
20 plane, and twice a week it started out I was seeing my
21 therapist and now I'm down to twice a month, but it will never
22 be the same for me, so thank you.

23 THE COURT: Thank you, Mr. Mason.

24 (2:03 p.m.)

25 THE COURT: We have also Shama Chopra.

1 MS. CHOPRA: Good afternoon, Your Honor.

2 THE COURT: Good afternoon.

3 MS. CHOPRA: Mr. Abdulmutallab carried more PETN
4 than Richard Reid. He was trained by Anwar Awlaki, the
5 terrorist who trained the likes of Major Nidal Hassan. The
6 terrorist Osama Bin laden bragged about Abdulmutallab.

7 These terrorists did not miss the Twin Towers and
8 the Pentagon, but by the grace of God they missed this time,
9 and I'm alive to tell my story to the world. Today, I am
10 standing before the world to say goodness won over evil.

11 I was sitting in Row 4A in first class. When they
12 brought him to the front I could smell his burning flesh in
13 addition to all the smoke. It was the most horrible moment in
14 my life, a moment which gave me nightmares to this day. In the
15 beginning, I would sit in a chair and just do nothing. I did
16 not feel like doing anything. My whole life has been
17 overturned by the action of Abdulmutallab.

18 Then, my husband, Raman, and my twin sons,
19 Christian and Sylvan, stood by me. My husband kept on telling
20 me that you cannot let these terrorists take control of your
21 life. He encouraged me to give interviews and tell the world
22 that these terrorists should never be able to run our lives.

23 Exactly one month later, Your Honor, on 25th
24 January 2010, I took the same flight again from Amsterdam to
25 Detroit. I could have gone directly from Amsterdam directly to

1 Montreal but I decided I'm going to take the same flight again,
2 and on 25th January 2010, I took that same flight again.

3 I took that flight again to tell the world that we
4 should not be afraid from these acts of terror, and to overcome
5 my fear of flying.

6 Instead of sitting there and crying, I found my
7 inner strength and it did wonders for me.

8 In April 2011, I was asked by the right honorable
9 prime minister of Canada, Mr. Harper, to run as a Conservative
10 Party candidate against the Honorable Justin Trudeau, the son
11 of the late Prime Minister Pierre Trudeau, and I did.

12 It was tough to -- it was tough to fight against a
13 candidate like him. Montreal's airport is named after his
14 father.

15 Then one day in May 2010, Abdulmutallab's parents
16 called me from Nigeria.

17 Farouk, look at me. I'm a mother of two boys who
18 are a bit older than you. Your mother, Aisha, and father,
19 Dr. Mutallab, called me in May 2010 to apologize. It broke my
20 heart. They told me you were misled, and to this day, I
21 believe that you were misled.

22 Dr. Mutallab and Aisha did their best but this is
23 not a perfect world. My husband, Raman, and your father have
24 talked many times, and every time, Raman had to tell your
25 father that it was not his fault.

1 You have a chance to redeem yourself. If you write
2 to me and truly tell me how we can prevent other young men and
3 women to be misled, I promise you that each one of your letters
4 will be published in full.

5 As a mother, I will work with you to make a better
6 world. As a mother, I feel for you. But I will not give you
7 or your terrorist friends an opportunity to break me down. My
8 tears are not for people like you. My tears are for those men
9 and women who have laid down their lives or are wounded while
10 fighting for freedom.

11 Look at that flag. It is the flag of the United
12 States of America. Under this flag, young and old, men and
13 women, have given their lives for freedom without thinking
14 twice. Whenever terrorists have attacked the United States of
15 America, the world stands with them as one.

16 People who serve under this flag are never
17 forgotten, and people like you are forgotten very easily.
18 Under this flag, justice will be served.

19 Your friends could run but they could not hide from
20 the long arm of the law. Today it is your turn, and justice
21 will be served.

22 I have served charities in India, Canada and United
23 States of America free of cost for over 30 years. I am the
24 sole founder of the Hindu Temple in Montreal. I sing free of
25 cost and raise funds for charities.

1 Your actions make me bolder and bigger. Look at
2 me. I am not afraid.

3 You tried to interfere with the work of God. You
4 had no right to take my life, and therefore you failed. Christ
5 has given me this life, and only he can take it back from me.

6 Here is a rosary for you. Allow me to -- I'll give
7 him the rosary. Take the name of Allah and look within
8 yourself.

9 If at a future date I am convinced that you are a
10 changed man, then one day I will be the first person to ask the
11 president of the United States of America to grant you a
12 pardon.

13 I truly believe people do change.

14 Your Honor, the terrorists have lost once again,
15 and we have won once again. In the end, we always do.

16 I take this opportunity to thank all the lawyers
17 involved in the case from both sides. You make us proud, and
18 for all the hard work you have done, I say thank you.

19 I forgive you Farouk. Good luck, Farouk.

20 Thank you, thank you, Your Honor.

21 Your Honor, from me, I just want to give him the
22 rosary.

23 THE COURT: You can hand it to Mr. Chambers if you
24 wish.

25 Mr. Theophilus Maranga.

1 (2:10 p.m.)

2 MR. MARANGA: Good afternoon, Your Honor.

3 THE COURT: Good afternoon.

4 MR. MARANGA: Theophilus Hussein Maranga.

5 I am a native and citizen of Ghana, but I've been a
6 permanent resident of the United States for the past 26 years,
7 and I've been practicing law in New York.

8 In 2008, I went home to stand as a member of
9 parliament in my country. I lost the election by 34 votes so I
10 decided to come back. I spoke to a vice president and I told
11 him I'm going back to the U.S. to continue my law practice.

12 I bought my ticket in the same office that
13 Abdulmutallab bought his ticket. My wife had come to the
14 airplane to meet me, and the children, because they don't see
15 me for a long time. But by the grace of God, I'm still
16 standing here, and I believe that is the grace of God.

17 But what bothered me for a long time, because I was
18 also born into a Muslim family. I'm no longer Muslim but I
19 still have family who are Muslims, and I respect them very
20 much. My father has two -- my father and mother have two --
21 four children. Two of us are Muslims now, and two of us are
22 Christians, and I don't believe in killing anybody in the name
23 of God. God is a peace loving God, so I don't understand why
24 somebody would kill in the name of God, to then stand up and
25 kill almost 300 people. That is very sad.

1 I feel very, very, very, very sad for
2 Mr. Abdulmutallab.

3 And I spoke to my brothers and sisters, and they
4 were shocked that somebody would take such an action.

5 But what I want to say to Abdulmutallab is simple,
6 that I believe that he has a zeal for God, but that zeal is
7 misplaced and misguided, and therefore he should seek the true
8 God.

9 Now I cannot even fly on a plane. Yesterday before
10 I left New York, I had to take some vodka because otherwise I
11 cannot, I'm scared to fly. I lost my tooth, I still have it.
12 And I was very sad for this day, that somebody would decide to
13 kill somebody or kill almost 300 people in the name of God.
14 What kind of God is that? God is peace loving, and God
15 wouldn't let anybody take anybody's life.

16 I'm so sorry for Abdulmutallab, and I pray for him
17 every day, my family prays for him that one day he will see the
18 true God, because I have brothers and sisters who are Muslims,
19 and they are fantastic. They wouldn't do, they wouldn't even
20 kill an ant, my father was a pacifist, my father wouldn't kill
21 even an ant, so we don't know why he should do that.

22 I'm scared to fly, and my family was even scared
23 for me coming here, but I believe God was in control and God
24 saved our lives.

25 So I wish Abdulmutallab very well, but I pray that

1 he will seek God zealously. If I had opportunity to speak to
2 him in my native -- I'm not from my Nigeria but I speak Hausa
3 very well, his native language. I wish they allow me to speak
4 to him in Hausa.

5 My family still loves him and we pray for him. God
6 bless America.

7 THE COURT: Thank you, Mr. Maranga.

8 (2:14 p.m.)

9 MR. HASKELL: Good afternoon, Judge.

10 THE COURT: Good afternoon.

11 MR. HASKELL: Before I get started, I wanted to say
12 thank you to Lamare Mason. Would you stand, Lamare?

13 It's hard for me to say this, but Lamare put out
14 the fire on our plane and saved all of our lives, and for that
15 I would just like to say thank you and you have my applause,
16 Lamare.

17 In regards to my statement, I would like to thank
18 the Court for giving me these five minutes and note that my
19 references to the government in the statement do not refer to
20 the Court or the prosecution but merely the federal government
21 itself.

22 I think it's pretty unfortunate that I have to say
23 some of the things that I do today, but I'm going to say them
24 anyway.

25 On Christmas day 2009, my wife Lori and I were

1 returning from an African safari and we had a connecting flight
2 through Amsterdam.

3 As we waited for our flight, we sat on the floor
4 next to the boarding gate, and what I witnessed while sitting
5 there and subsequent events have changed my life forever.
6 While I sat there, I witnessed Umar, he was wearing jeans and a
7 white T shirt, just like he is today. He was being escorted
8 through security by a man in a tan suit who spoke perfect
9 English, American English without an accent. He aided Umar in
10 boarding our flight without a passport. The airline gate
11 worker initially refused Umar boarding until the man in the tan
12 suit intervened.

13 At the time, the event meant nothing to me at all,
14 I didn't know who Umar was, and I didn't think about it at all,
15 but little did I know that Umar would try and kill me just a
16 few hours later as our flight approached Detroit.

17 The final ten minutes of our flight after the
18 attack were the worst minutes of my life, without question.
19 During those ten minutes, I sat paralyzed in fear.
20 Unfortunately, what happened next has had an even greater
21 impact on my life and has saddened me even further.

22 When we landed, I was shocked that our plane taxied
23 to the gate. I was further shocked that we were forced to sit
24 on the plane for 20 minutes, supposedly with PETN all around
25 us, and supposedly with parts of a bomb all over the cabin.

1 The officers that boarded the plane did nothing to
2 ensure our safety and did not check for accomplices or other
3 explosive devices. Several passengers trampled through parts
4 of the bomb and even walked through the supposed PETN as they
5 exited the plane.

6 We were taken into a terminal with our carry-on
7 bags unchecked. There was no concern for our safety
8 whatsoever, even though Umar told officers as he exited the
9 plane that there was another bomb on the plane.

10 I wondered why nobody was concerned for our safety,
11 accomplices, or other bombs on the plane. It worried me
12 greatly. I immediately told the FBI my story on what I had
13 seen in Amsterdam to help catch the accomplice of Umar's. It
14 soon became obvious that the FBI had no intention to deal with
15 what I said at all and wasn't interested. For one month, the
16 government refused to admit the existence of the man in the tan
17 suit before changing course and admitting his existence, which
18 appeared in an ABC news article on January 22, 2010. That was
19 the last time the government talked about this man.

20 The video that would prove the truth of my account
21 has never been released, and I don't know if this is proper or
22 not, but I would ask this Court to release it after the
23 sentencing here today to clear my good name.

24 I continue to be very emotionally upset that the
25 video has never been released. The Dutch police meanwhile, in

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1 this article that I have here today, if anyone would like to
2 see it, admitted that Umar boarded our flight without ever
3 showing his passport in Amsterdam, and because passport check
4 and security are in the same line, by admitting that he didn't
5 show his passport, Dutch police admitted that he also did not
6 go through security at all.

7 It upsets me greatly that the government refuses to
8 admit this fact. I became further saddened from this case when
9 Patrick Kennedy of the State Department during congressional
10 hearings admitted that Umar was a known terrorist, was being
11 followed, and the U.S. allowed him to enter into the U.S.
12 intentionally so it could catch accomplices of Umar's.

13 I was once again shocked and saddened when Michael
14 Leiter of the National Counter-Terrorism Center admitted during
15 the same hearings that intentionally letting terrorists into
16 the U.S. was a frequent practice of the U.S. government. I
17 cannot fully explain my sadness, disappointment and fear when I
18 realized that my own government allowed this attack to happen
19 intentionally.

20 During this time, I questioned if my government
21 actually put Umar on a plane intentionally with a live bomb. I
22 had many, many sleepless nights over this issue. My answer
23 came shortly thereafter in late 2010. I noticed that the FBI
24 had admitted to giving out intentionally defective bombs to
25 numerous terrorists, including the Portland Christmas tree

1 bomber and Wrigley Field bomber.

2 Further, I took note of the Free Press article
3 January 11, 2011, when standby attorney Chambers was quoted as
4 indicating the government's own experts in this case admitted
5 that the bomb was impossibly defective. I wondered how that
6 could be. Certainly, I thought al Qaeda wouldn't go through
7 all the trouble to plant such an attack only to provide Umar
8 with an impossibly defective bomb.

9 I attended nearly all of the pretrial hearings in
10 this matter, and at a hearing on January 28, 2011, I was
11 greatly disappointed by the prosecution's request to block
12 evidence by Mr. Chambers, and I quote: "As it could then be
13 able to be obtained by third parties who could use it to sue
14 the government in a civil suit." This was extremely troubling
15 to me because it was an admission of wrongdoing of some kind on
16 the part of the government.

17 It further upset me that the government was putting
18 its own interest in hiding the true events of this story ahead
19 of those of the passengers.

20 When I attended the jury selection hearings, I
21 question why versions of the same two questions kept coming up,
22 those being the following: "Do you think whether -- you'll be
23 able to tell whether something is actually a bomb?" And, "Do
24 you realize that sometimes the media doesn't always tell the
25 truth?"

1 I continued to be greatly saddened at this point as
2 I felt the truth continued to be hidden. When Umar listed me
3 as his only witness, I was happy to testify, not on his behalf
4 but on behalf of the truth. I never expected to testify as my
5 eyewitness account would have been too damaging to the myth
6 that the government and the media are trying to put forward.

7 A mere five days after I was announced as a
8 witness, there was an inexplicable guilty plea which
9 exasperated me as I would no longer be able to testify in this
10 matter.

11 In closing, I will just say that regardless of how
12 the media and government try to shape the public's perception
13 of this case, I am convinced beyond a shadow of a doubt that
14 Umar was given an intentionally defective bomb by a U.S.
15 government agent of some sort and placed on our flight without
16 ever showing a passport and without going through security at
17 Amsterdam, in order to stage a false terrorist attack to be
18 used to implement various government policies which it in fact
19 has done.

20 It really bothers me that the government will not
21 admit its role in this event, but I do not expect that it
22 would. The effect this matter has had on my life has been
23 astounding, and due to this case, I will never, ever trust
24 anything the government says, ever.

25 In regards to sentencing, nothing I've said excuses

1 the fact that Umar tried to kill me. He has waived what I
2 believe would have been a very valid entrapment defense, and
3 like I said, I would have testified in this matter with an
4 entrapment defense. Umar has not allowed me to do that.

5 I would just like to say one final thing to Umar,
6 you are not a great Muslim martyr. You are merely a government
7 patsy.

8 Thank you for this time, Your Honor. I ask the
9 Court to impose the mandatory sentence.

10 THE COURT: Mrs. Haskell, do you have anything
11 different you wish to say other than what your husband has said
12 about the government conspiracy?

13 (2:23 p.m.)

14 MRS. HASKELL: I don't have anything to say about a
15 government conspiracy, Your Honor.

16 Thank you for this time, Your Honor. You swore me
17 into this court five and-a-half years ago, and I never guessed
18 today I would be here to give any kind of victim impact
19 statement.

20 Christmas, I was sitting with my husband eight rows
21 behind where the commotion started. First, we saw smoke, then
22 we heard yelling, and then I saw that the plane was on fire.
23 Flames were starting to spread up the wall, then above the
24 wall. I looked at my husband, terrified. I sat there in
25 shock. I thought about my mom, my family, I thought about how

1 my husband was terrified of flying before this, and could not
2 believe that something like this was happening to us.

3 I thought my life was over. I've never been that
4 scared before in my life, and I hope to never be that scared
5 again. Nobody knew or understood what was going on, and then
6 it was over. A flight attendant, who I had the pleasure of
7 meeting today and thanking for saving my life, put out the fire
8 and we quickly landed.

9 For weeks after the incident, I think I was in a
10 state of shock. For months after the incident, I had
11 nightmares about fires on planes and dying. Once in a while, I
12 still have nightmares about the incident, which tend to occur
13 after the hearings that I attend on this case.

14 After all of that, you would think I would be angry
15 at the defendant, and I was at first. I'm not any longer. My
16 outlook on life has always been that things happen for a reason
17 and I always try to find the positive in every situation.

18 I would ask that the Court sentence the defendant
19 to the mandatory sentence of life in prison without parole and
20 disregard Mr. Chambers' recent filing with the Court asking for
21 a more lenient sentence because nobody was actually harmed.
22 This is a joke. We were all harmed, very much so. I am
23 thankful I am still alive, but what the defendant did caused
24 lifetime harm to me and everybody else on the plane which I
25 think has been seen today with the statements that have been

1 given by all of us.

2 All of us on that plane have a special connection
3 that nobody else will ever understand unless they've been
4 through something similar. We all continue to be affected by
5 this incident and will be for the rest of our lives, both
6 directly and indirectly.

7 And even though it was one of the worst things that
8 I've ever experienced, I have learned a lot from the
9 experience. Being on that plane and part of a near-death
10 experience has taught me to be a more aware person and a better
11 attorney. I have now made it one of my goals in life to
12 educate others, to question things more, become involved, don't
13 just assume things are being done correctly because someone, or
14 the government, tells you that.

15 I'm happy that this is the final hearing and closes
16 this chapter in my life. I'd like to move on and never think
17 about this ever again.

18 I'd like to again thank the Court for allowing me
19 time to make my statement.

20 (2:27 p.m.)

21 THE COURT: Thank you, Mrs. Haskell.

22 I think that concludes the victim statements.
23 There were no other requests for time to speak that I'm aware
24 of. And before I move to the issue of restitution, I think
25 it's probably appropriate to have the government play the video

1 that it wishes to play.

2 MS. CORKEN: Your Honor, with the Court's
3 permission I'd like to play it during my statement.

4 THE COURT: All right. That's fine.

5 Then I will review the requests for restitution
6 that were filed in this case and give a preliminary ruling with
7 respect to those.

8 Final ruling I'll obviously save until I actually
9 pronounce sentence, but I had eight requests for restitution
10 which were documented in some way, and I have reviewed all of
11 those. Some of them, about half of them, are for specific
12 expenses which were incurred for, for example, somebody had to
13 give up his jacket so that the FBI could test the chemical
14 residue that was on the jacket, and he's asking for the value
15 of the jacket.

16 Others had missed plane connections or that sort of
17 thing. I have reviewed the requests, and make a tentative
18 award of actual expenses to Dior Adel, Jenny Adel, Robert
19 Digennaro, Michelle Dillemuth, Anne Fernandez, Geoffrey Howard,
20 Annmarie Kamper and Kris Lizaso, not to exceed \$400 in any one
21 case. Several of the requests were for substantially in excess
22 of \$400, but I'm limiting the restitution amounts to actual
23 expenses documented, not to exceed \$400 per person.

24 And in doing so, I'd just note that under the
25 sentencing, the restitution statute that is 18 U.S.C.

1 Section 3663(b), the Court, in determining whether to order
2 restitution under this section, is directed to consider, first,
3 the amount of the loss sustained by each victim as a result of
4 the offense, and second, the financial resources of the
5 defendant, the financial needs and earning ability of the
6 defendant and the defendant's dependents and such other factors
7 as the Court deems appropriate.

8 I don't believe, given the nature of the sentence
9 to be imposed today, that this defendant has any ability to pay
10 restitution, certainly at the present time, and even if he's
11 permitted to participate in some sort of work program
12 eventually while he is in custody, it will be an extremely
13 limited amount that he's ever able to generate, so that is the
14 basis for my limitation on the requests.

15 I should also say for the record that every
16 passenger and staff person on the flight was notified by the --
17 Sandy Palazzolo of the United States Attorney's office that
18 they could, if they wished, submit a request for restitution
19 and that the deadline for submitting such requests is the end
20 of November of last year. We did get a couple of later
21 requests, but everyone was informed that the deadline was
22 November 30th, and I believe that all of the ones that I
23 articulated were submitted before that time, and none other. I
24 haven't rejected any, but I'm also not opening this up to
25 further requests for restitution given that everyone was

1 informed of the deadline. Only these were submitted.

2 I'd like to move now to the portion of the
3 sentencing hearing that we call elocution where counsel and the
4 defendant himself are able to make statements, and I'll begin,
5 Mr. Chambers, by asking if you would like to make a statement
6 on behalf of Mr. Abdulmutallab.

7 MR. CHAMBERS: I believe Mr. Abdulmutallab is going
8 to make a statement himself.

9 THE COURT: All right. I was clearly going to
10 invite him to do it himself. Do you have an additional
11 statement, or no?

12 MR. CHAMBERS: I do not.

13 THE COURT: All right. Mr. Abdulmutallab.

14 (2:31 p.m.)

15 THE DEFENDANT: In the name of Allah, the most
16 merciful, the most gracious, all praise to Allah and peace and
17 blessings to be upon his messenger, Muhammad, the final and
18 last messenger to mankind.

19 As for what follows, in quick response to some of
20 the things that have been said, to Lamare Mason, I say my life
21 and the lives of Muslims has also changed due to the U.S.
22 attacks on Muslim civilians. And to Miss Chopra, I say Shaykh
23 Osama Bin Laden and Shaykh Anwar Al-Awlaki are alive and shall
24 be victorious by God's grace, and Shaykh Osama Bin Laden and
25 Anwar Al-Awlaki are rightly guided and God knows best doers are

1 guided.

2 God said it is those who do not -- it is those --
3 God said those who do not rule by what he has revealed are the
4 oppressors, and whatever God decrees for a Muslim is not a
5 failure.

6 And then to Mr. Maranga, I say God is a merciful,
7 his mercy is borne in his anger and God is also severe in
8 punishment. This is why there is heaven and hell even in
9 Christianity. The mujahedeen are proud to kill in the name of
10 God, and that is exactly what God told us to do in the Koran.

11 And to Kurt Haskell, every Muslim testifies that
12 there is no God but Allah, and that Muhammad, peace be upon
13 him, is his final messenger, and I testify to that, and I am
14 not a U.S. government patty(sic).

15 The situation of the one who believes in Allah is
16 always good. Whatever happens to him is good for him. It is
17 always a win-win situation, and this is the situation only for
18 the believer in Allah. This is what Muhammad, peace be upon
19 him, teaches us.

20 Today is a day of victory, and God is great, and
21 indeed God said you'll find the harshest people to those who
22 believe in Allah to be the jews, and indeed, Simon Perry, who
23 wanted to speak today fits that description very well. There
24 are devils among spirits and men, and whoever wants to see one
25 can look at Simon Perry, along with his partners in crime, the

1 FBI agents and, of course, the U.S. Attorneys, Michael Martin,
2 Jonathan Tukel and Cathleen Corken.

3 They intentionally misquote and mispresent(sic)
4 facts with false statements in order to achieve their evil
5 goals. The mujahedeen, by God's permission, shall continue
6 unharmed and unopposed by the adversaries until the jews are
7 driven out of Palestine and the righteous servants of Allah
8 inherit the world with former great Assyria that includes
9 Palestine as the capital of the Muslim world.

10 This, the messenger of God, Muhammad, peace be upon
11 him, promised us, and he speaks the truth. And our final call
12 is all praise to Allah, peace be on those who follow guidance.

13 MR. CHAMBERS: I would just indicate for the
14 record, I did not give an elocution because of
15 Mr. Abdulmutallab's wishes.

16 THE COURT: Thank you, Mr. Chambers. Thank you
17 Mr. Abdulmutallab. Ms. Corken.

18 || (2:35 p.m.)

19 MS. CORKEN: Yes, Your Honor, thank you.

20 Your Honor, as the Court's aware, the government is
21 asking that the Court impose the maximum sentence on the
22 nonmandatory counts, and that is a sentence that's called for
23 by the sentencing guidelines, and it is the sentence that is
24 fully justified by the seriousness of the defendant's conduct
25 in this case.

1 The defendant is someone who attempted to commit
2 mass murder. On Christmas day of 2009, he boarded Flight 253
3 with a cold blooded, calculated plan to destroy Flight 253 and
4 to murder all 259 people aboard it. He had hidden in his
5 underwear a device that was designed to cause massive damage to
6 accomplish that plan, and on the descent to Detroit, he
7 depressed the syringe of that device, fully intending that
8 device to bring the plane down over U.S. soil, as he later told
9 law enforcement officers.

10 The video that we plan to play for you will show
11 you just what the defendant's explosive device was designed to
12 do and intended to do. The first clip is in real time, Your
13 Honor.

14 (Videotape played.)

15 THE DEFENDANT: Allahu Akbar.

16 MS. CORKEN: This is slow motion, Your Honor.

17 THE DEFENDANT: Allahu Akbar.

18 MS. CORKEN: Your Honor, this is what defendant
19 referred to during the plea as a blessed weapon. I'd like to
20 offer the Court for its inspection one of the shards from the
21 aluminum that the device was sitting on in the explosive
22 demonstration.

23 THE DEFENDANT: Allahu Akbar.

24 THE COURT: I'm sorry, Mr. Chambers, do you know
25 what it is that the defendant is saying?

1 MS. CORKEN: God is great, Your Honor.

2 THE COURT: Thank you.

3 MS. CORKEN: Your Honor, I offer that shard from
4 the aluminum to illustrate to the Court the damage that could
5 have been caused by the device that the defendant was wearing.

6 The defendant claims in its recent filing with the
7 Court that because the device did not function fully and no
8 death or serious bodily injury occurred in this case that he
9 should be treated more leniently.

10 The defendant did everything possible that he could
11 to bring about the destruction of Flight 253 and the death of
12 its passengers. His plan failed not because of something that
13 he did, not because of something that he failed to do. His
14 plan failed because of a technical glitch in the operation of
15 the device, a glitch that the defendant was completely unaware
16 of.

17 It was sheer fortuity that numerous deaths were
18 averted in this case. It wasn't the defendant's doing and he
19 shouldn't be given credit for that. The defendant also argued
20 in his recent filing that there was not a single victim in this
21 case. The passengers here and in interviews with us have
22 described the trauma, the panic and the terror that they
23 suffered on that plane when the fire erupted in the cabin.

24 Lamare Mason could tell you, I'm sure, or a pilot
25 certainly would, that fire in an airplane is about the most

1 dangerous thing that you can have. If it's not brought under
2 control, you're gone. There are not fire engines that are
3 going to come to the rescue thousands of feet in the air.

4 The passengers have told us, many have, that they
5 thought they were going to die, that they thought that the
6 children that were with them were going to die, and many
7 passengers, as the Court knows, still suffer from the trauma of
8 the incident, as the victim impact statements certainly attest.

9 In addition to the trauma that passengers and crew
10 suffered, the defendant's conduct, of course, had a broader
11 impact. It was intended to. And the American public at large
12 was victimized by the defendant's conduct. There were also, as
13 the Court knows, enormous costs associated with augmented
14 security measures that were put in place after the defendant's
15 attacks. So there were certainly actual victims of the
16 defendant's conduct, there was certainly actual harm caused by
17 the defendant's conduct.

18 The defendant has also argued for a sentence below
19 the guideline range based on lack of criminal record. His
20 conduct is so serious, so egregious that the maximum sentence
21 is warranted regardless of his lack of criminal record, and
22 that's certainly the view that is expressed through the
23 sentencing guidelines. For terrorism offenses, defendants are
24 treated in the highest criminal history category, regardless of
25 their actual criminal history.

1 In addition, the base offense level for the
2 defendant's offenses in this case is so high, it's at 43, that
3 his sentence would be life regardless of whether it's category
4 I or it's category VI. So the sentencing guidelines reflect
5 what we would say is the sound view, that when it comes to
6 terrorism, it really doesn't matter if you've been around the
7 criminal block a previous time.

8 The defendant also in his recent filing asked for a
9 sentence below the guideline range, and leniency, claiming that
10 he can be rehabilitated. I will just ask the Court to keep in
11 mind the defendant's statements here today, the defendant's
12 statements at the time of his plea. It's been two years since
13 the offense, and I think it's clear from those statements that
14 there is very little prospect of rehabilitation in this case.
15 Rehabilitation requires an acknowledgment of wrongdoing, some
16 expression of remorse, some feeling of regret. There has been
17 no expression of regret, remorse, an acknowledgment of
18 wrongdoing on the part of defendant.

19 As he stated today, he and those who think alike,
20 think similarly to the defendant are proud to kill in the name
21 of God. So there certainly is no basis for a more lenient
22 sentence based on the defendant's potential rehabilitative --
23 potential for rehabilitation. We would say that there is no
24 such potential. Quite the opposite, in fact, Your Honor, given
25 the defendant's statements both in his plea and his statements

1 today.

2 The sentence needs to incapacitate him for as long
3 as possible so he no longer or never will have the opportunity
4 to harm anyone. In addition, there is the goal of general
5 deterrence. It may be unlikely that the Court could deter a
6 committed suicide bomber, but the Court could deter somebody
7 who is headed down that path. Terrorists, including suicide
8 bombers, are not born that way. Radicalization takes time and
9 it's a process.

10 The Court should send a message to those who have
11 started down that path or who are considering terroristic acts
12 down the road that if they do commit such an act, they will
13 feel the full weight of the law and they will receive the
14 maximum possible punishment.

15 Your Honor, the maximum sentence on all counts here
16 is also consistent with sentences in other cases. We cited a
17 number of those cases in our sentencing memo. I'm certainly
18 not going to recite them here. I'd just remind the Court of
19 the Richard Reid case, which is the closest factually to this
20 case, where there were three nonmandatory life sentences, and
21 the defendant received the maximum on other discretionary
22 counts.

23 Same thing is true in the Shahzad case, the Times
24 Square bomber case, where the defendant there received
25 nonmandatory life sentences and the maximum sentences on other

discretionary counts. I'd note that he doesn't have a criminal record, and in neither the Richard Reid case nor the Shahzad case was there serious bodily injury or death.

4 A below-the-maximum sentence in this case, Your
5 Honor, sends the message that terrorism is excused, at least in
6 some measure, be it by virtue of a defendant's age, his lack of
7 criminal record, or because of a mechanical failure in an
8 explosive.

9 It's important for the Court's sentence to express
10 just the opposite message, that there is no justification, that
11 there is no rationale, that there is no excuse for blowing up a
12 plane and for trying to kill hundreds of innocent people.

13 We ask the Court to impose the maximum sentence on
14 each count as called for by the sentencing guidelines. It
15 fairly punishes the defendant, it reflects the seriousness of
16 the offense, and then insures that he will never again have a
17 chance to harm Americans in the future.

18 (2:48 p.m.)

19 THE COURT: Thank you, Ms. Corken.

Well, as a preliminary matter, I'd like to just review the eight offenses to which the defendant has pled guilty in this matter.

23 Count 1, conspiracy to commit an act of terrorism
24 transcending national boundaries; Count 2, possession of a
25 firearm or destructive device in furtherance of a crime of

1 violence; Count 3, attempted murder within the special aircraft
2 jurisdiction of the United States; Count 4, use and carrying of
3 a firearm or destructive device during and in relation to a
4 crime of violence; Count 5, willfully placing a destructive
5 device in, upon and in proximity to a civil aircraft which was
6 used and operated in interstate, overseas and foreign air
7 commerce which was likely to have endangered the safety of such
8 aircraft; Count 6, possession of a firearm or destructive
9 device in furtherance of a crime of violence; Count 7,
10 attempted use of a weapon of mass destruction, and Count 8,
11 willful attempt to destroy and wreck a civil aircraft.

12 On the statutes at issue in each count, defendant
13 faces up to 20 years of imprisonment on Counts 3, 5, and 8
14 which may run concurrent to each other, up to life imprisonment
15 on Count 7, also concurrent to the other three counts, that is,
16 Counts 3, 5 and 8, a mandatory consecutive sentence of 30 years
17 on Count 2, mandatory consecutive sentences on Counts 1, 4, and
18 6. The sentence on Count 1 is up to life in prison, and Counts
19 4 and 6 are mandatory consecutive life in prison sentences.

20 With respect to the guidelines, in the present
21 case, the sentencing guidelines in addition to the statutes
22 also provide for life sentences. As I just noted, Counts 4 and
23 6 carry statutorily mandated life sentences, consecutive life
24 sentences. Counts 1, 3, 5, 7 and 8 all are subject to the
25 terrorism enhancement of the United States Sentencing

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1 Guidelines Section 3A1.4 which adds 12 levels to each of the
2 base offenses and also places defendant in criminal history
3 category VI. As a result, each of the nonmandatory counts has
4 an adjusted offense level above level 43, which is the highest
5 level contained in the guidelines.

6 An offense level of 43 calls for a life sentence at
7 any criminal history level. The fact that the terrorism
8 enhancement places defendant in the most serious criminal
9 history category merely reinforces the fact that the Sentencing
10 Commission sought to ensure life sentences for individuals who
11 commit the types of offenses of which defendant was convicted.

12 Now, the guidelines that I just referred to are not
13 mandatory anymore, they're advisory, and the Court is directed
14 under the sentencing statute, 18 U.S.C. Section 3553(a) to
15 consider the following factors in imposing sentence. Number
16 one, the nature and circumstances of the offense and the
17 history and characteristics of the defendant; number two, the
18 need for the sentence imposed to reflect the seriousness of the
19 offense, to promote respect for the law and to provide just
20 punishment for the offense, to afford adequate deterrence to
21 criminal conduct, to protect the public from further crimes of
22 the defendant, and to provide the defendant with needed
23 educational or vocational training, medical care or other
24 correctional treatment in the most effective manner.

25 The third factor is the kind of sentences

1 available, the fourth is the sentencing guidelines applicable
2 to the defense, and the fifth is the need to avoid unwarranted
3 sentencing disparities among defendants with similar records
4 who have been found guilty of similar conduct.

5 So, first, the nature and circumstances of the
6 offense and the history and characteristics of the defendant.
7 I think it needs to be emphasized, and we have certainly heard
8 some moving testimony this afternoon from several of the people
9 on board that plane that this was an act of terrorism that
10 cannot be quibbled with.

11 Terrorism has been defined a lot of ways but some
12 of the most salient definitions, it seems to me, is terrorism
13 is the premeditated, deliberate, systematic murder, mayhem and
14 threatening of the innocent to create fear and intimidation in
15 order to gain a political or tactical advantage, usually to
16 influence an audience. We certainly have that in this case, as
17 we heard from those who were on board the plane, and our own
18 experience of the last 12 years since September 11 confirms
19 that definition for all of us.

20 The UN General Assembly Resolution of 1994 states
21 as follows with respect to terrorism: "Criminal acts intended
22 or calculated to provoke a state of terror in the general
23 public, a group of persons or particular persons for political
24 purposes are in any circumstance unjustifiable, whatever the
25 considerations of a political, philosophical, ideological,

1 racial, ethnic, religious or any other nature that may be
2 invoked to justify them."

3 And finally, the United States definition of
4 terrorism under the federal criminal code is, "Activities that
5 involve violent or life-threatening acts that are a violation
6 of the criminal laws of the United States or any state and
7 appear to be intended to intimidate or coerce a civilian
8 population, to influence the policy of a government by
9 intimidation or coercion, or to affect the conduct of a
10 government by mass destruction, assassination or kidnapping,
11 and occur primarily within the territorial jurisdiction of the
12 United States."

13 Anyone who has sat through any of the proceedings
14 in this case knows that the direction that Mr. Abdulmutallab
15 was given was that he should wait to detonate his bomb until he
16 was over the United States, and by his own statements in the
17 past and certainly here today this act was undertaken to
18 achieve a political and religious objective.

19 So the nature and circumstances of the offense are
20 not in dispute. Defendant attempted to blow up an airplane
21 with 289 people on board and he failed to accomplish this
22 objective only because of a technical problem with his bomb.
23 Defendant, by his own statements, was deeply committed to his
24 mission, seeking out and finding al Qaeda and Anwar Al-Awlaki,
25 volunteering for a martyrdom mission and then becoming involved

1 in planning and training for a significant amount of time.

2 When he entered his plea of guilty in this case,
3 and again today, defendant stated that he believes that, "The
4 Koran obliges every able Muslim to participate in jihad and
5 fight in the way of Allah those who fight you, and kill them
6 wherever you find them, some parts of the Koran say, an eye for
7 an eye, a tooth for a tooth."

8 Defendant added that participation in jihad against
9 the United States is considered among the most virtuous deeds
10 in Islam and is highly encouraged in the Koran. In explaining
11 his offense, defendant stated that, "I attempted to use an
12 explosive device which in the U.S. law is a weapon of mass
13 destruction which I call a blessed weapon."

14 Defendant has never expressed doubt or regret or
15 remorse about his mission. To the contrary, he sees that
16 mission as divinely inspired and a continuing obligation.

17 Second factor is the need for the sentence to
18 reflect the seriousness of the offense, to promote respect for
19 the law and to provide just punishment for the offense.

20 And I think I commented sufficiently, perhaps, on
21 the seriousness of the offense and the need to promote respect
22 for the law, but I want to comment a little bit on "to provide
23 just punishment for the offense." No charge in this case was a
24 capital offense. The defendant does not face the death
25 penalty, he faces life in prison without parole.

1 I want to read just a few sentences from an article
2 that recently appeared in the New Yorker by a reporter named
3 Adam Gopnik:

4 "A prison is a trap for catching time. We hear a
5 fair amount about the inner life of the American prison, but
6 the catch is that American prison life is mostly undramatic.
7 The reported stories fail to grab us because, for the most
8 part, nothing happens. One day in the life of a prisoner
9 serving a lengthy sentence is all we need to know about that
10 prisoner because the idea that anyone could live for a minute
11 in such circumstances seems impossible. One day in the life of
12 an American prison means much less because the force of it is
13 that one day typically stretches out for decades. It isn't the
14 horror of the time at hand but the unimaginable sameness of the
15 time ahead that makes prisons unendurable for their inmates.
16 The basic reality of American prisons is not that of the lock
17 and key, but that of the lock and clock.

18 "That's why no one who has been inside a prison, if
19 only for a day, can ever forget the feeling. Time stops. A
20 note of attenuated panic, of watchful paranoia, anxiety, and
21 boredom and fear mixed into a kind of enveloping fog.

22 "As a smart man once wrote after being locked up,
23 the thing about jail is that there are bars on the windows and
24 they won't let you out. This simple truth governs all the
25 others. What prisoners try to convey to the free is how the

1 presence of time as something being done to you instead of
2 something you do things with alters the mind at every moment.
3 Time becomes, in every sense, this thing you serve."

4 Mr. Abdulmutallab is 23, 24 years old now. He has
5 only that to look forward to as life in prison, and it seems to
6 me that that is just punishment for what he has done.

7 The third factor is the need to protect the public
8 from further crimes of the defendant. I believe that the
9 defendant poses a significant, ongoing threat to the safety of
10 American citizens everywhere. I already recited some of the
11 things that he said when he pled guilty. He stated that it is
12 his religious belief that the Koran obliges every able Muslim
13 to participate in jihad and fight in the way of Allah those who
14 fight you, and kill them wherever you find them, and that
15 participation in jihad against the United States is considered
16 among the most virtuous of deeds in Islam and is highly
17 encouraged in the Koran.

18 Thus, by his own words, defendant has shown that he
19 continues to desire to harm the United States and its citizens,
20 and that he views it as his religious obligation to do so.

21 I believe that defendant has stated and it is clear
22 that he has enormous motivation to carry out another terrorist
23 attack but that he lacks the capability of doing that because
24 of his incarceration. This Court has no ability to control the
25 defendant's motivation, which does appear to be unchanged.

1 However, I can control defendant's opportunity to act on those
2 intentions.

3 The fourth factor is the need to provide defendant
4 with educational or vocational training and medical treatment.
5 I don't think any of those factors is applicable to this case,
6 and I think that the recitation of the factors that I've
7 already referred to probably adequately covers the statute.

8 I will acknowledge what Ms. Corken said, that the
9 maximum sentence has been imposed in other similar cases such
10 as the Richard Reid case.

11 So with all of that in mind, I sentence the
12 defendant as follows.

13 On Counts 1 through 8 of the first superseding
14 indictment, pursuant to the Sentencing Reform Act of 1984, the
15 Court, having considered the sentencing guidelines and factors
16 contained in 18 U.S.C. Section 3553(a) hereby commits the
17 defendant, Umar Farouk Abdulmutallab, to the custody of the
18 Bureau of Prisons for a term of 240 months on Counts 3, 5, and
19 8, to be served concurrently, and life on Count 7, to run
20 concurrent to the other three counts; to life on Count 1 to run
21 consecutive to all other counts; to 30 years on Count 2 to run
22 consecutive to all other counts; to life on Count 4 to run
23 consecutive to all other counts, and life on Count 6, to run
24 consecutive to all other counts.

25 And in case that isn't clear, that is the maximum

1 penalty that is permitted on each of the eight counts of the
2 indictment.

3 An \$800 special assessment is ordered due
4 forthwith. I incorporate in this sentence the order of
5 restitution that I indicated earlier. The total amount of
6 restitution ordered in this case which will appear in the
7 judgment and commitment order is \$2,105 to the, I think it's
8 nine persons who made such a claim. That is Dior Adel, \$400;
9 Jenny Adel, \$400; Robert Digennaro, \$88; Michelle
10 Dillemuth, \$400; Anne Fernandez, \$252; Geoffrey Howard, \$165;
11 Annmarie Kamper \$400, and Kris Lizaso, \$400. Interest is
12 waived on the restitution amounts.

13 The Court waives the imposition of a fine, the cost
14 of incarceration and the cost of supervision due to the
15 defendant's inability to pay. Upon release from imprisonment,
16 which will never occur, but just for the record, defendant
17 shall be placed on supervised release for a period of life on
18 each count to run concurrent.

19 The mandatory drug testing condition is suspended
20 based on the Court's determination that the defendant poses a
21 low risk of future substance abuse. If he ever is on
22 supervision, defendant shall abide by the standard conditions
23 adopted by the United States District Court for the Eastern
24 District of Michigan.

25 Mr. Abdulmutallab, I believe that you have the

1 right to appeal your sentence. If you wish to appeal your
2 sentence, that needs to be done within ten days.

3 Are there any objections to the sentence just
4 pronounced that have not previously been raised?

5 MR. CHAMBERS: No, Your Honor.

6 MR. TUKEL: No, Your Honor.

7 THE COURT: All right. This hearing is concluded.

8 THE DEFENDANT: Allahu Akbar.

9 THE CLERK: All rise. Court is in recess.

10 THE DEFENDANT: Allahu Akbar.

11 (Proceedings concluded 3:05 p.m.)

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3 C E R T I F I C A T I O N

4 I, Suzanne Jacques, official court
5 reporter for the United States District
6 Court, Eastern District of Michigan,
7 Southern Division, appointed pursuant to
8 the provisions of Title 28, United States
9 Code, Section 753, do hereby certify that
10 the foregoing is a correct transcript of
11 the proceedings in the above-entitled
12 cause on the date hereinbefore set forth.

13 I do further certify that the foregoing
14 transcript has been prepared by me or
15 under my direction.

16 s/ Suzanne Jacques
17 Suzanne Jacques
Official Court Reporter

2/15/12
Date

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